MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, January 14, 2021 - 1:00 p.m.

Present: Dale L. Schultz

Chairman (Telephonic)

Joseph M. Hennelly, Jr. Scott P. LeMarr

Vice Chair (Telephonic) Commissioner (Telephonic)

Steven J. Krenzel

Commissioner (Telephonic)

James Ashley

Director (Telephonic)

Gaetano Testini

Chief Legal Counsel (Telephonic)

Jason M. Porter Trevor Laky

Deputy Director (Telephonic) Legislative Affairs Chief/Public Information Officer (Telephonic)

Renee Pastor Jessie Atencio Self Insurance (Telephonic) ADOSH Director (Telephonic)

Anna Maria Stonerock

ADOSH Admin (Telephonic)

Kara Dimas

Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Ahmed Najem and Larry Barnett (ALR Construction, Inc); Emily Vazquez (Snell & Wilmer); and Brett Barratt (NCCI).

Approval of Minutes of January 7, 2021 Regular Meeting Minutes.

This item was moved to the next meeting.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2CNP20/21-0276 Beibei Amigos Language Preschool LLC \$1,000
 - 2. 2CNP20/21-0151 Premier Diesel Equipment & Turbo LLC \$1,000
 - 3. 2CNP20/21-0231 Canyon Carpentry & Tile LLC \$1,000
 - 4. 2CNP20/21-0234 Southwest Garden Arts LLC \$1,000
 - 5. 2CLP20/21-0013 HotShot Hardscape & Design LLC \$1,000

Commissioner Krenzel moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Ms. Pastor discussed lump sum commutations and the process for updating the discount rate to be used in calculating the present value of an award under A.A.C. R20-5-121 and R20-5-122. Staff recommended setting the discount rate at 1.17% for calculating fixed period and permanent lump sum commutations, effective immediately.

Vice Chair Hennelly moved to approve staff recommendation to use a 1.17% discount rate in the calculation for lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Commission LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Referral

Years in Business:

Empl. Covered by Inspection:

23

5

ALR Construction, Inc.

1719 ½ 22nd Ave

1/19 ½ 22th Ave Phoenix, AZ 85009

Site Location:

1015 N 2nd St

Phoenix, AZ 85004

Inspection No:

V4364 -1485775

Inspection Date: 07/29/2020

REPEAT - SERIOUS - Citation 1 - Item 1 -

a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, were not provided with training. 29 CFR 1926.21(b)(2)

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.21(B)(2), Which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 2/5/20 and abated on 10/18/19, with respect to a workplace located at 445 N 5th St, Phoenix, AZ 85004.

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.21(B)(2), which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 2/5/20 and abated on 10/18/19, with respect to a workplace located at 15420 N Cotton Ln, Surprise, AZ 85338.

Div. Proposal - \$5,000.00

Formula Amt. - \$1,000.00

REPEAT - SERIOUS - Citation 1 - Item 2 -

a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, without a protective system installed. 29 CFR 1926.652(a)(1)

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.652(A)(1), which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 1/8/20 and abated on 6/14/19, with respect to a workplace located at 445 N 5th St, Phoenix, AZ 85004.

Div. Proposal - \$2,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 - Item 1 –

a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, without a competent person conducting a daily inspection. 29 CFR 1926.651(k)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY -\$8,000.00 TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio noted this file was remanded to ADOSH at the last meeting. Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Najem did not have any comments this week. He did have a question if the previous citation could be revisited but Mr. Atencio noted the matter has already been closed. Chairman Schultz wanted to confirm that notification had been issued. Mr. Atencio noted to the best of his knowledge but would have to review the file, and it would have been sent to the employer where they request it during the opening and closing conference. Mr. Najem noted he was the safety coordinator on the project and they did have a trench box and there was an OSHA representative that stopped by for a site inspection and noted the issue.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Bam Shotcrete Inc

Referral

8300 E County 6th St

Years in Business:

3

Yuma, AZ 85365

36807 N 14th St

Empl. Covered by Inspection: 5

Inspection No:

Site Location:

Phoenix, AZ 85086

T3633 -1495130

Inspection Date:

09/24/2020

SERIOUS – Citation 1 - Item 1 –

a) Outside east wall of substation: Employees operating a Genie brand aerial lift, model #A80/60 and serial #Z8008-2298, had not been instructed concerning the recognition and avoidance of live overhead power lines. 29 CFR 1926.95(a)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –

a) Outside east wall of substation: Employees operating a Genie brand aerial lift, model #A-80/60 and serial #Z8008-2298, contacted live overhead power lines and were not using protective clothing for arc flashes. 29 CFR 1926.95(a)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS - Citation 1 - Item 3a -

a) Outside east wall of substation: Employees operating a Genie brand aerial lift, model #A-80/60 and serial #Z8008-2298, contacted live overhead power lines that were not guarded by insulation or other means. 29 CFR 1926.416(a)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 3b –

a) Outside east wall of substation: Employees operating a Genie brand aerial lift, model #A-80/60 and serial #Z8008-2298, contacted live overhead power lines without warning signs to advise of the hazard. 29 CFR 1926.416(a)(3)

Div. Proposal - \$0.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$8,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Mr. Ashley clarified the division proposed penalty is \$6,000.

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Borderland Construction Company, Inc.

Referral

N Postvale Rd & W Moore Rd

Years in Business:

38 2

Marana, AZ 85653

400 E 385th St

Empl. Covered by Inspection:

Tucson, AZ 85713

Inspection No:

Site Location:

R3180 -1503051

Inspection Date:

11/18/2020

SERIOUS – Citation 1 - Item 1 –

 a) N Postvale Rd & W Moore Rd, Marana, AZ: An employee used Stihl brand cut-off-saw, model #T5-420 and serial numbers unknown, without receiving training to safely operate the saw. 29 CFR 1926.21(b)(2)

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

a) N Postvale Rd & W Moore Rd, Marana, AZ: An employee used a Stihl brand, cut-off-saw, model #T5-420 and serial numbers unknown, with a diamond abrasive blade that was prohibited by the manufacturer. 29 CFR 1926.21(b)(2)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 2 - Item 1 -

a) N Postvale Rd & W Moore Rd, Marana, AZ: An employee used a Stihl brand, cut-off-saw, model #T5-420 and serial numbers unknown, with a diamond abrasive blade that was prohibited by the manufacturer. 29 CFR 1926.300(a)

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Atencio noted that Borderland Construction Company has worked with ADOSH before and was one of the original partnerships during the pilot program in 2011/12 and have been working extensively with ADOSH for consultation to try to become a VPP or SHARP site, and still actively working with ADOSH.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the Golden Hard Hat Award for January was presented to Special Services for the agency's COVID mitigation efforts. A sampling for some of the measures taken since March for both the Phoenix and Tucson buildings include installing touchless soap, paper towel and hand sanitizer dispensers, utilizing additional sanitizing cleaning crews, installing plexiglass barriers, making accommodations for injured workers to attend virtual hearings, placing additional signage throughout the building and elevators for social distancing, fogging the buildings, and setting up PPE kits for state vehicles. For these reasons and many more the Special Services team contributed to the success of COVID mitigation with the measures and protocols in place, and to make sure that was done efficiently and quickly.

Chairman Schultz commented that an amazing amount of work was completed and the award is well deserved for the Special Services group. Additionally, Chairman Shultz commended Mr. Ashley and the Commission staff for addressing the risk from the standpoint of VPP, going above and beyond what is required to truly do everything possible they can to make a safe environment. All of these pieces fit together to make the agency more productive and safer.

Ms. Dimas confirmed Commission meeting dates through March 2021.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

/James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary